

**OPERATING GUIDELINES AND REPORTING REQUIREMENTS  
FOR CHAPTER 11 CASES**

**REGION I**

**MAINE, MASSACHUSETTS,  
NEW HAMPSHIRE AND RHODE ISLAND**



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### **I. GENERAL REQUIREMENTS**

The United States Trustee Program is a component of the Department of Justice charged with supervisory and administrative responsibilities in cases filed under the Bankruptcy Code. Pursuant to 28 U.S.C. § 586(a)(3) and 11 U.S.C. § 704(a)(8)<sup>1</sup>, the United States Trustee has established these Operating Guidelines and Reporting Requirements (the Guidelines) for Chapter 11 Debtors-in-Possession and Chapter 11 trustees.

In order to ensure appropriate compliance with the Operating Guidelines and Reporting Requirements it is extremely important that Debtor's counsel review these requirements with the Debtor-in-Possession immediately upon receipt. The Debtor and counsel must acknowledge receipt of these Guidelines and furnish the United States Trustee with verification that they have read, understand and agree to comply with the Guidelines by executing the Verification and

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<sup>1</sup> 11 U.S.C. § 704(a)(8) is made applicable to a Chapter 11 Debtor by 11 U.S.C. §§ 1106(a)(1) and 1107(a).

returning to the United States Trustee within fourteen (14) days. *See* REQUIRED DOCUMENTS for the form.

#### **A. DEBTOR-IN-POSSESSION RESPONSIBILITIES**

With the filing of a Chapter 11 petition, the Debtor becomes a new and separate entity called a "Debtor-in-Possession." The Debtor-in-Possession (or "Debtor") has fiduciary and statutory responsibilities to preserve and maintain the bankruptcy estate and to operate as efficiently as possible to maximize ultimate payments on pre-petition debts while keeping post-petition debts current. *See* 11 U.S.C. §§ 1106 and 1107. Some of the Debtor's obligations are as follows:

- The Debtor may not pay pre-petition obligations except as allowed by the Bankruptcy Code or by Order of the Court.
- The Debtor must obtain a Court Order to employ or pay any attorneys, accountants, and other professionals.
- The Debtor must pay in full all post-petition obligations as they come due. This includes quarterly fee payments to the United States Trustee.
- The Debtor may not make any new loan, give a post-petition guarantee, or borrow funds without Court approval unless otherwise permitted by the Bankruptcy Code.
- The Debtor may not sell assets outside the ordinary course of business without Bankruptcy Court approval.
- The Debtor must comply with Section 363 of the Bankruptcy Code regarding the use of cash collateral. Questions regarding cash collateral should be directed to the Debtor's attorney.
- The Debtor must notify the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number within fourteen (14) days after the change. The United States Trustee must be advised immediately of any significant change in the Debtor's business. Significant changes include, but are not limited to, casualty or theft losses, changes in insurance coverage, or allegations of violations of laws, ordinances, or regulations, including but not limited to the failure to pay taxes, which could affect the continued operation of the Debtor's business.

- The Debtor must file all federal, state, and local tax returns when due or obtain an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or Court Order. The Debtor must timely pay all post-petition taxes.
- The Debtor should be aware that in addition to the requirements of the Bankruptcy Code, there are many requirements for Debtors found in the Federal Rules of Bankruptcy Procedure, as well as Local Bankruptcy Rules and Standing Orders for the District in which the Debtor filed its bankruptcy case. The websites for the Bankruptcy Courts within Region 1 are as follows:
  - Maine - [www.meb.uscourts.gov](http://www.meb.uscourts.gov)
  - Massachusetts - [www.mab.uscourts.gov](http://www.mab.uscourts.gov)
  - New Hampshire - [www.nhb.uscourts.gov](http://www.nhb.uscourts.gov)
  - Rhode Island - [www.rib.uscourts.gov](http://www.rib.uscourts.gov)
- The Debtor must file a list of its twenty (20) largest unsecured creditors, excluding insiders, with the Clerk of the Bankruptcy Court. The complete name, address, e-mail address, telephone number, fax number and name of contact of each creditor must be supplied. *See* Fed. R. Bankr. P. 1007(d).
- The Debtor must file a list of all equity security holders of the Debtor including the name, address, telephone number and type of interest held by each holder. Unless an extension is granted by the Court, the Debtor's schedules, statements and other documents must be filed within 14 days after the filing of a voluntary petition for relief. *See* 11 U.S.C. § 521(1) and Fed. R. Bankr. P. 1007(c).

In addition, the accounting books and records of the Debtor must be closed as of the petition filing date. The Debtor must open a new set of books and records, and must provide separate accounting with respect to pre-petition and post-petition accounts and transactions. Any pre-petition tax return due, but not filed, as of the date of the petition, must be filed with the appropriate taxing authority. It is the responsibility of the Debtor to ascertain whether there are

such unfiled returns and, as appropriate, to amend schedules to reflect all pre-petition tax liabilities.

All certifications, reports, documents, and any other papers required by the United States Trustee which are to be signed by the Debtor, must be signed by the Debtor or a responsible officer or managing member of the Debtor. Failure of the Debtor or its responsible officer or managing member to sign any certification, report or document, or signing by any other party, such as Debtor's attorney or accountant, renders the document incomplete.

Any request to amend or modify these requirements for a particular Chapter 11 case must be made in writing and approval by the United States Trustee is effective only if in writing.

Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with the provisions of the Bankruptcy Code or with the United States Trustee Guidelines may result in the United States Trustee seeking from the Bankruptcy Court an Order converting or dismissing the case, appointing a chapter 11 trustee, or any other remedy deemed appropriate.

**B. COMMUNICATION WITH REPRESENTED PARTIES  
(MCDADE AMENDMENT)**

Most communication occurring between United States Trustee Program employees and Debtors is administrative in nature relating to the United States Trustee's statutory duty to supervise the administration of bankruptcy cases. In order to ensure that direct contact with a represented party is authorized by the Debtor's attorney, the United States Trustee requires the Debtor's attorney to complete and submit the Direction of Debtor Attorney Concerning United States Trustee Contact with Client (the "McDade" Authorization form). *See* REQUIRED DOCUMENTS for additional information and for a link to this form.

## **II. INITIAL DEBTOR INTERVIEW**

The Debtor and the Debtor's attorney must attend an Initial Debtor Interview (the "IDI") that is scheduled by the United States Trustee's Office shortly after the filing of the chapter 11 case and prior to the § 341 meeting ("Meeting of Creditors.") At the Initial Debtor Interview, the United States Trustee will seek to become familiar with the Debtor's case as well as the Debtor's business plan and operations, assets, liabilities and accounting methods. Accordingly, the Debtor's representative(s) at the Initial Debtor Interview must have personal knowledge and information regarding the Debtor's pre-petition and post-petition operations, accounting records, tax returns and financial statements. During the Initial Debtor Interview, the United States Trustee will discuss the role of the United States Trustee, explain the Guidelines, and discuss scheduling matters. The Debtor should review the information contained in these Guidelines thoroughly before the Initial Debtor Interview so that any administrative questions can be addressed at that time. Failure by the Debtor to attend meetings reasonably requested by the United States Trustee is cause for conversion or dismissal of the bankruptcy case. *See* 11 U.S.C. § 1112(b)(4)(H).

### **A. REQUIRED DOCUMENTS**

The Debtor must provide a number of documents to the United States Trustee, some immediately upon the chapter 11 filing, some before the Initial Debtor Interview to be held no later than 14 days after the chapter 11 filing, and others on a regular basis throughout the case. All documents are available on the United States Trustee's website at

[http://www.justice.gov/ust/r01/reg\\_info.htm](http://www.justice.gov/ust/r01/reg_info.htm)

Item	Due Date
<p><b>Evidence of Insurance. Immediately upon filing, the Debtor must provide the United States Trustee with evidence of insurance for every policy maintained by the Debtor.</b> A Certificate of Insurance from the Debtor's insurance agent with the United States Trustee named as a notified party is required. The Certificate of Insurance must show the type(s) of coverage, coverage limits, and policy period. The Certificate of Insurance must show the name of the Debtor (i.e. the name on the petition) as the insured party. <i>See</i> INSURANCE REQUIREMENTS for additional information.</p>	<p>Immediately upon filing</p>
<p>Debtor's Receipt and Certification of Understanding of Operating Guidelines and Reporting Requirements of the United States Trustee For Chapter 11 Cases and Designation of Specific Individuals.</p>	<p>By the time of the Initial Debtor Interview, but no later than 14 days after chapter 11 filing</p>
<p>Information for Initial Debtor Interview with United States Trustee. (<i>See</i> link to website with forms.)</p>	<p>By the time of the Initial Debtor Interview, but no later than 14 days after chapter 11 filing</p>
<p>Declaration of Pre-Petition Account Closings and Opening of Debtor-In-Possession Bank Accounts. The Debtor should have begun the process of setting up Debtor-in-Possession account(s) either before or immediately upon the filing of the bankruptcy petition. (<i>See</i> BANK ACCOUNT REQUIREMENTS for additional information and for a link to the current list of approved financial depositories.)</p>	<p>By the time of the Initial Debtor Interview, but no later than 14 days after chapter 11 filing</p>
<p>An original voided check for each DIP account the Debtor has opened with the appropriate styling. Photocopies or temporary checks are not acceptable. (<i>See</i> BANK ACCOUNT REQUIREMENTS for additional information and a sample check.)</p>	<p>By the time of the Initial Debtor Interview, but no later than 14 days after chapter 11 filing</p>

Item	Due Date
Direction of Debtor Attorney Concerning United States Trustee Contact with Client (the “McDade” Authorization form).	No later than 14 days after chapter 11 filing
Group/Pension Information Form (must be completed even if not applicable).	No later than 14 days after chapter 11 filing
Copies of the Debtor's federal income tax returns filed in the past two years. Copy of the most recently issued or prepared audited and/or unaudited financial statements (inclusive of balance sheet, income statement, and statement of cash flows).	No later than 14 days after chapter 11 filing
A schedule of aged accounts receivables.	No later than 14 days after chapter 11 filing
A list of all disbursements for the ninety (90) days prior to the filing.	No later than 14 days after chapter 11 filing
Copies of all licenses and/or permits (including licenses to intellectual property and certificates evidencing ownership of intellectual property).	No later than 14 days after chapter 11 filing
Copies of all written policies given to customers regarding the sale of personally identifiable information.	No later than 14 days after the chapter 11 filing
Chart of Accounts, Listing of Accounts, or General Ledger (if available).	No later than 14 days after chapter 11 filing
Copies of bank statements and cancelled checks for every pre-petition bank account held by the Debtor or to which the Debtor had or has access for the six months prior to the bankruptcy filing.	No later than 14 days after the chapter 11 filing



Item	Due Date
Monthly Operating Reports, due fourteen (14) days after the close of the month. <i>See</i> OPERATING REPORT REQUIREMENTS for additional information and for a link to the current monthly operating report forms.	14 days after the end of the month (e.g., Report for February due March 14 <sup>th</sup> )
Internal Revenue Service Form 6123 - Verification of Fiduciary's Federal Tax Deposit	Copy to be attached to each monthly operating report
Proof of insurance renewal prior to the expiration dates shown in the current policies. <i>See</i> INSURANCE REQUIREMENTS for additional information.	Copies to be provided to the United States Trustee when each insurance policy renews
Copies of Periodic Report Regarding Value, Operations and Profitability of Entities in which the Estate Holds a Substantial or Controlling Interest, (Official Form 26). <i>See</i> website for a link to the Official Form 26.	Initial Report filed with the Court no later than 7 days before the § 341 meeting of creditors with subsequent reports no less frequently than 6 months thereafter until the effective date of a plan or the case is dismissed or converted. <i>See</i> Fed. R. Bankr. P. 2015(3).
Post Confirmation Operating Reports. <i>See</i> website for a link to the current quarterly post-confirmation report forms.	14 days after the end of the month (e.g., Report for February due March 14 <sup>th</sup> )

## **B. AFFILIATED ENTITIES**

If the Debtor is an entity that is indirectly or directly affiliated, related, and/or shares common ownership with other entities (a "layered" entity structure, for example), the Debtor must provide the United States Trustee with an organizational chart or detailed statement that explains the relationship between the companies and provides the federal identification numbers

(FEINs) for each. The Debtor must also file periodic financial reports for each entity that is not a publicly traded corporation or a Debtor in a bankruptcy case, and in which the estate holds a substantial or controlling interest. *See* Fed. R. Bankr. P. Rule 2015.3.

### **III. § 341 MEETING OF CREDITORS**

The Debtor or authorized representative of the Debtor (i.e. an officer, director, or shareholder if the Debtor is a corporation; a partner if the Debtor is a partnership; a manager or member if the Debtor is a limited liability company) and the Debtor's attorney are required to appear at the § 341 Meeting of Creditors which must take place within twenty-one (21) to sixty (60) days after the filing of a voluntary petition. All creditors and other parties in interest are notified of the meeting by the Clerk of the Bankruptcy Court using the list provided by the Debtor. The Debtor(s) will be examined under oath by the United States Trustee, creditors, and other parties in interest in attendance. *See* 11 U.S.C. §§ 341 and 343; Fed. R. Bankr. P. Rule 2003(b). The Debtor's testimony at the § 341 meeting is recorded and preserved for public access for at least two years after the conclusion of the meeting of creditors. *See* Fed. R. Bankr. P. 2003(d). The United States Trustee may also request that additional representatives of the Debtor attend the § 341 Meeting and be available for examination.

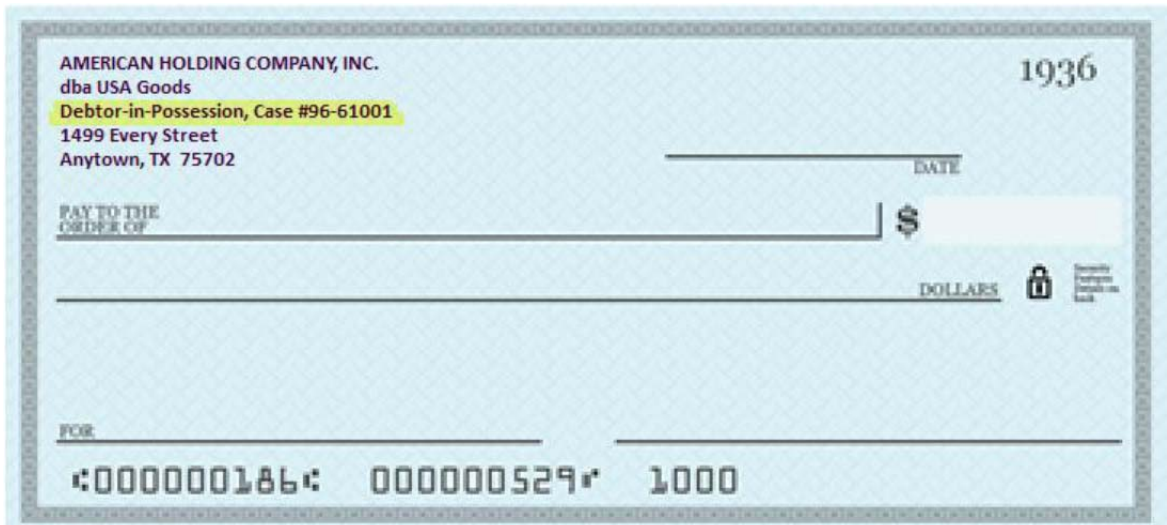
To reschedule a meeting the Debtor's counsel must contact the United States Trustee. If the United States Trustee approves the request, the Debtor's counsel is responsible for notifying all interested parties of the rescheduled § 341 meeting and must certify that notice of the rescheduled meeting has been sent to all parties in interest. Except in extraordinary situations, the United States Trustee will not reschedule a meeting after the Clerk's Office has sent notice of the meeting.

If the Debtor is an individual, he or she must bring to this meeting (1) proof of his/her identity and (2) proof of his/her Social Security Number. Permissible forms of identification include a valid driver's license, government issued photo identification card, U.S. Passport, or resident alien card. Proof of Social Security Number may include a Social Security card, current Form W-2, or payroll check stub.

#### **IV. BANK ACCOUNT REQUIREMENTS**

Immediately upon the filing of the Debtor's petition, the funds in the Debtor's existing bank accounts become property of the bankruptcy estate. Upon the filing of the case, the Debtor must immediately close pre-petition bank accounts and deposit the funds into new "Debtor-in-Possession" (DIP) bank account(s). Note that outstanding checks that have not cleared pre-petition bank accounts at the time of filing should not be permitted to clear. All financial transactions involving property of the estate must be made through the DIP account(s). All receipts must flow through the DIP account(s). All disbursements should be by check.

The Debtor must ensure that its checks are imprinted with the full name of the Debtor-in-Possession, exactly as shown on its voluntary petition, (Official Bankruptcy Form 1). If the Debtor is filing individually or filing a joint petition, the check must include the first, middle and last names (not initials) of all petitioners. If use of a d.b.a. ("doing business as") is desired in the styling of the check, the d.b.a. must have been recorded in the box on the petition labeled "All other Names used by the Debtor in the last 6 years (including married, maiden and trade names)." The designation "Debtor-In-Possession" (do not abbreviate as "DIP") and the case number must also be imprinted on all checks. *See* the following sample check as an illustration:



The Debtor must provide original voided samples of permanent checks from each account to the United States Trustee for review. If the Debtor uses cash collateral, separate cash collateral accounts must be established and maintained pursuant to 11 U.S.C. § 363(4). Any funds in excess of those required for current operations should be maintained in either an interest-bearing account, or other investments as permitted by 11 U.S.C. § 345(a).

If a trustee is appointed to succeed a Debtor-in-Possession, the trustee may continue to use previously opened Debtor-in-Possession accounts, but must ensure that the accounts and checks reflect the trustee's name and title along with the name of the Debtor and the case number.

The investment and protection of bankruptcy estate funds is governed by Section 345 of the Bankruptcy Code. Section 345(b) of Title 11 provides that, unless the Court Orders otherwise, all financial institutions in which estate monies exceeding federal deposit insurance limits are deposited or invested, have either posted a bond or pledged securities of a type specified in the statute. This requirement ensures that all estate fund balances exceeding federal deposit insurance limits are protected against loss in the event of the failure of the financial

institution. The most current Authorized Depository Listing is available on our website at [www.justice.gov/ust/r01/reg\\_info.htm](http://www.justice.gov/ust/r01/reg_info.htm) under the heading "Initial Debtor Interview (IDI) Information." The United States Trustee maintains a list of financial institutions that have agreed to pledge securities with the Federal Reserve or post a bond in order to insure their bankruptcy accounts. The United States Trustee monitors these institutions to ensure the requirements of Section 345(b) are met.

## **V. INSURANCE REQUIREMENTS**

The Debtor must maintain appropriate insurance and make all premium payments when due. **Immediately upon filing, the Debtor must provide the United States Trustee with proof of the insurance coverage required by these Guidelines.** The proof is typically in the form of a one page certificate. The proof must disclose, at a minimum, the effective date and the termination date of coverage; the type and limits of coverage provided; and the identity of all loss payees and notified parties. The Debtor must instruct its insurance company to list the United States Trustee as a notified party or certificate holder. Upon expiration or other termination of any coverage, the Debtor shall immediately provide the United States Trustee with adequate proof of replacement coverage. The Debtor shall maintain at least the following coverage, where appropriate:

- General comprehensive liability
- Property (personal and theft)
- Casualty and theft
- Workers' compensation
- Vehicle
- Product Liability
- Flood insurance
- Directors and Officers Liability

- Professional malpractice
- Liquor Liability
- Other coverage customary or prudent in the Debtor's business, or required by law
- Proof of Renewal of Insurance during pendency of the case

## **VI. OPERATING REPORT REQUIREMENTS**

Debtors are required to submit to the United States Trustee Operating Reports until the Court enters a Final Decree, dismisses the case, or converts the case to another chapter in bankruptcy. The form of the required report varies, depending on the status of the case (pre- or post-confirmation).

### **A. PRE-CONFIRMATION**

The Debtor must file Operating Reports monthly. The Monthly Operating Reports must be prepared using the forms attached. These forms are also located on the United States Trustee's website at [http://www.justice.gov/ust/r01/reg\\_info.htm](http://www.justice.gov/ust/r01/reg_info.htm). The Debtor may attach additional documentation to the Monthly Operating Reports, but is not permitted to substitute pages of the report with this documentation. The Debtor must complete all pages of the Monthly Operating Report. If portions of the report are not applicable, the Debtor may note this in the report, but that page must be included. In a joint case filed by married individuals, one report is acceptable but both Debtors must sign each report. The Debtor must file or submit Monthly Operating Reports each month even if no financial activity occurred during a reporting period.

Compliance with Local Rules and filing procedures in each jurisdiction is required. Debtors in Maine and New Hampshire are required to file their Monthly Operating Report electronically with the Clerk of the Bankruptcy Court. Debtors in Massachusetts and Rhode Island Debtor are required to submit Monthly Operating Reports to their respective United States Trustee's Office. Massachusetts and Rhode Island Debtors are also permitted to e-mail reports

to the United States Trustee, provided that they follow up with an original signed cover page. The appropriate e-mail addresses are available upon request.

Qualifying small business Debtors must use the Official Form B25 C Monthly Operating Report, a copy of which is provided at the U.S. Bankruptcy Court's website at <http://www.uscourts.gov/bkforms/index.html>. Individual and non-small business Debtors who generally report their financial activity on a cash basis should also use Official Form B25 C. Non-small business Debtors who generally report on an accrual basis should use the standard Monthly Operating Report form, a copy of which is provided at the United States Trustee website at [http://www.justice.gov/ust/r01/reg\\_info.htm](http://www.justice.gov/ust/r01/reg_info.htm).

The Debtor is required to attach to the Monthly Operating Report a photocopy of each month's bank statement for every account in the Debtor's name, as well as any account to which the Debtor had access during the reporting period. The Debtor is also required to attach copies of all tax returns filed during the reporting period. Tax returns and bank statements should be redacted to comply with applicable laws affecting privacy rights of third parties. *See* Fed. R. Bankr. P. 9037.

The Monthly Operating Report is based on a calendar month (e.g. January 1 - January 31), and all reports must be filed or submitted by the fourteenth (14<sup>th</sup>) day of the month following the reporting period. Such reports shall disclose all transactions of the calendar month immediately preceding the due date. The first report shall include all transactions for the period of the first month that the Debtor is in bankruptcy. It is recognized that in almost all cases, the first report will only be for a partial month. If the Debtor's first Monthly Operating Report is due prior to the § 341 Meeting of Creditors, the Debtor must timely submit the Monthly Operating Report.

## **B. POST-CONFIRMATION**

After confirmation of the Debtor's Plan, the Debtor is required to file a Post-Confirmation Summary Report. The Post-Confirmation Summary Report is to be filed monthly, and includes, among other items, all payments made under the Plan of Reorganization and payments made in the ordinary course of doing business. A copy of the Post-Confirmation Summary Report form is provided at the United States Trustee website at [http://www.justice.gov/ust/r01/reg\\_info.htm](http://www.justice.gov/ust/r01/reg_info.htm). There is one single Post-Confirmation Summary Report form for all Debtor types. This Report is to be filed for all months until the Court enters a Final Decree, dismisses the case, or converts the case to another chapter in bankruptcy. Failure to file or submit Monthly Operating Reports or Post-Confirmation Summary Reports may result in dismissal of the case or conversion of the case to Chapter 7. *See* 11 U.S.C. § 1112(b)(4)(F), and (H).

## **VII. UNITED STATES TRUSTEE QUARTERLY FEES**

The Debtor must pay quarterly fees to the United States Trustee until the Court has issued an Order converting or dismissing the case or a Final Decree closing the case. *See* 11 U.S.C. § 350; Fed. R. Bankr. P. 3022. The quarterly fee is calculated on the actual and constructive cash disbursements made during the days of the quarter that the Chapter 11 case is open.

Constructive disbursements are those made by another party on the Debtor's behalf or in which the Debtor benefits. Proceeds from the sale of properties that are used to pay debt are also considered constructive cash disbursements and are included in the quarterly fee calculation even if those funds are not received directly.

Quarterly fees are not prorated for a partial quarter. The minimum fee applies even if the case is open for only one day of the quarter and if no disbursements are made during the



reporting period. The following chart displays the quarterly fee schedule for calendar quarters beginning January 1, 2008. *See* 28 U.S.C. § 1930(a)(6):

DISBURSEMENT CATEGORY			QUARTERLY FEE DUE
\$0	-	\$14,999	\$325
\$15,000	-	\$74,999	\$650
\$75,000	-	\$149,999	\$975
\$150,000	-	\$224,999	\$1,625
\$225,000	-	\$299,999	\$1,950
\$300,000	-	\$999,999	\$4,875
\$1,000,000	-	\$1,999,999	\$6,500
\$2,000,000	-	\$2,999,999	\$9,750
\$3,000,000	-	\$4,999,999	\$10,400
\$5,000,000	-	\$14,999,999	\$13,000
\$15,000,000	-	\$29,999,999	\$20,000
\$30,000,000	-	or more	\$30,000

	QUARTERLY FEE DUE DATE	
1st Quarter	January 1 <sup>st</sup> to March 31 <sup>st</sup>	Due by April 30 <sup>th</sup>
2nd Quarter	April 1 <sup>st</sup> to June 30 <sup>th</sup>	Due by July 31 <sup>st</sup>
3rd Quarter	July 1 <sup>st</sup> to September 30 <sup>th</sup>	Due by October 31 <sup>st</sup>
4th Quarter	October 1 <sup>st</sup> to December 31 <sup>st</sup>	Due by January 31 <sup>st</sup>

Prior to each due date, the Debtor will receive an invoice. The invoice includes a payment stub which must be returned along with the Debtor's check made payable to "United States Trustee" in care of the following address:

United States Trustee  
P.O. Box 530202  
Atlanta, GA 30353-0202

The Debtor's account number, which is written on the payment stub, should be written on the face of the check. The address given is a lockbox at a bank. It may not be used for service of process, correspondence, or for any other purpose other than for the payment of quarterly fees. The Debtor should direct all correspondence and questions to the local Office of the United States Trustee.

The Debtor is responsible for timely payment of quarterly fees. If a check is marked "Insufficient Funds," all future quarterly fee payments must be made by cashier's check, certified funds, or postal money order. Failure to pay quarterly fees is cause for conversion or dismissal of the Chapter 11 case pursuant to 11 U.S.C. § 1112(b)(4)(K).

The United States Trustee Program assesses interest on unpaid Chapter 11 quarterly fees. The interest rate assessed is the rate in effect as determined by the Treasury Department at the time the Debtor's account becomes past due. If payment of the full principal amount past due is received within thirty (30) days of the date of the notice of initial interest assessment, the interest assessment will be waived. *See* 31 U.S.C. § 3717.

In order to be confirmed, a Debtor's plan of reorganization must provide for payment of all unpaid quarterly fees as of its effective date and continuing through the date that the Court enters the Final Decree. *See* 11 U.S.C. § 1129(a)(12). The United States Trustee may also object to dismissal of any case in which outstanding fees are owed.

Debtors are advised that the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. § 3701, permits the United States Trustee to use the Debtor's Taxpayer Identification Number (TIN) as reported by the Debtor on its bankruptcy petition for the purpose of collecting and reporting on any delinquent debt, including Chapter 11 quarterly fees and interest, if applicable, that are owed to the United States Trustee. The Department of Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the Debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to the Debtor; (4) engage private collection agencies to collect the debt; or (5) engage the United States Attorney's office to sue for collection. Collection costs will

be added to the total amount of the debt.

### **VIII. APPOINTMENT OF AN UNSECURED CREDITORS' COMMITTEE**

The Bankruptcy Code requires the United States Trustee to appoint a Creditors' Committee composed of unsecured creditors willing to serve. *See* 11 U.S.C. § 1102. The Committee is generally appointed from the list of the twenty (20) largest unsecured creditors submitted with the petition.

Shortly after the filing of the petition, the United States Trustee invites the Debtor's largest unsecured creditors to serve on the unsecured Creditors' Committee. Potential committee members receive information explaining the duties and responsibilities of the creditors' committee. If at least three (3) creditors respond affirmatively, the United States Trustee may appoint an unsecured Creditors' Committee. The Debtor is required to meet with the members of the Creditors' Committee as soon as practicable after the appointment of the Committee to transact such business as may be necessary and proper. *See* 11 U.S.C. § 1103(d).

The United States Trustee may appoint a committee of other creditors of a common type or class if such appointment is necessary to assure their adequate representation. For example, under certain circumstances, the United States Trustee may appoint a committee of timeshare holders, limited partners, or bondholders. *See* 11 U.S.C. § 1102.

If a Committee is appointed in a qualifying small business case, the Debtor is no longer considered a small business Debtor unless the Court determines that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight.